



CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1634

[Docket No. CPSC-2008-0005]

Standard for the Flammability of Residential Upholstered Furniture

AGENCY: Consumer Product Safety Commission.

ACTION: Termination of rulemaking.

SUMMARY: The Consumer Product Safety Commission is withdrawing its proposed rule on flammability standards for residential upholstered furniture that published March 4, 2008 in the Federal Register. This rulemaking is no longer active because it has been superseded by the COVID-19 Regulatory Relief and Work From Home Safety Act.

DATES: As of [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] the proposed rule published March 4, 2008 at 73 FR 11701 is withdrawn.

ADDRESSES: National Product Testing and Evaluation Center, 5 Research Place, Rockville, MD 20850.

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SUPPLEMENTARY INFORMATION:

A. Upholstered Furniture Rulemaking under the FFA

1. *Advance Notice of Proposed Rulemaking.* In 1993, the National Association of State Fire Marshals (NASFM) petitioned the Commission to issue regulations under the FFA addressing upholstered furniture fire risks. On June 15, 1994, the Commission granted the petition, in part, and issued an advance notice of proposed rulemaking (ANPR) on the specific risk of small, open flame-ignited fires. 59 FR 30735. The Commission denied the petition regarding large, open flame-ignited fires, and deferred action on the petition for cigarette-ignited

fires. On October 23, 2003, the Commission published a subsequent ANPR, expanding the upholstered furniture proceeding to address ignition of upholstered furniture by small open flames and smoldering cigarettes. 68 FR 60629.

2. *Notice of Proposed Rulemaking.* On March 4, 2008, the Commission issued a notice of proposed rulemaking (2008 NPR) for a flammability standard for residential upholstered furniture under the FFA. 73 FR 11702. The 2008 NPR proposed performance requirements to reduce the likelihood of upholstered furniture fires ignited by cigarettes or small open flames. Manufacturers and importers of upholstered furniture could choose one of two possible methods for compliance: (1) use upholstery cover material that met the specified cigarette-ignition performance test, *i.e.*, “Type I” furniture; or (2) incorporate an interior fire barrier between the cover fabric and interior filling materials that met both the smoldering and small open-flame resistance tests, *i.e.*, “Type II” furniture. An “interior fire barrier” was defined as a fire-resistant material that is interposed between the upholstery cover fabric and any interior filling material. The 2008 NPR on upholstered furniture flammability focused on performance standards which did not prescribe requirements for filling materials or require manufacturers or importers to use FR chemical additives to achieve compliance.

B. The COVID-19 Act

On December 27, 2020, the “COVID -19 Regulatory Relief and Work From Home Safety Act,” became law. Pub. L. No. 116-260. Section 2101(c) of the COVID-19 Act mandated that, 180 days after the date of enactment of the COVID-19 Act, the standard for upholstered furniture set forth by the Bureau of Electronic and Appliance Repair, Home Furnishings and Thermal Insulation of the Department of Consumer Affairs of the State of California in Technical Bulletin (TB) 117-2013 (TB 117-2013), entitled, “Requirements, Test Procedure and Apparatus for Testing the Smolder Resistance of Materials Used in Upholstered Furniture,” published June 2013, “shall be considered to be a flammability standard promulgated by the

Consumer Product Safety Commission under section 4 of the Flammable Fabrics Act (15 U.S.C. 1193).”

Thus, under the COVID-19 Act, the California standard, TB 117-2013, is a federal flammability standard promulgated under section 4 of the FFA. TB 117-2013 sets forth the requirements, test procedure, and apparatus for testing the smolder resistance of materials used in upholstered furniture from hazards associated with smoldering ignition. The standard provides methods for smolder resistance of cover fabrics, barrier materials, resilient filling materials, and decking materials for use in upholstered furniture. The COVID-19 Act and the FFA (15 U.S.C. 1191 et seq.) does not preempt or otherwise affect any State or local law, regulation, code, standard, or requirement that concerns health risks associated with upholstered furniture; and is not designed to protect against the risk of occurrence of fire, or to slow or prevent the spread of fire, with respect to upholstered furniture. In addition, sections 1374 through 1374.3 of title 4, California Code of Regulations (except for subsections (b) and (c) of section 1374 of that title), as in effect on the date of enactment of the COVID-19 Act are not preempted. Finally, the California standard may not be preempted

On April 9, 2021, the Commission published a direct final rule that codified the relevant statutory text of section 2101 of the COVID-19 Act under 16 CFR part 1640. 86 FR 18440. This part establishes the regulatory text of the California standard, TB 117-2013, as the mandatory federal flammability standard for upholstered furniture under section 4 of the FFA, and sets forth the statutory requirements. Because the Commission did not consider any comment received on the direct final rule to be a significant adverse comment, the rule went into effect on June 25, 2021, and applies to all upholstered furniture manufactured, imported, or reupholstered on or after that date. However, the compliance date for the new labeling requirement will go into effect on June 25, 2022.

C. Termination of the Upholstered Furniture Rulemaking

The direction in the COVID-19 Act requiring that the California standard, TB 117-

2013, be a federally mandated flammability standard promulgated by the CPSC under section 4 of the FFA, supersedes the upholstered furniture rulemaking proceeding initiated by the Commission under the FFA in 1994. Accordingly, on March 30, 2021, the Commission voted to terminate the rulemaking associated with upholstered furniture and directed that notification of the termination of rulemaking be issued in the *Federal Register*.¹ Through this document, the Commission has terminated the upholstered furniture rulemaking proceeding that began with the issuance of the ANPR in 1994, and all subsequent rulemakings in that proceeding including the 2008 NPR.

Alberta E. Mills, Secretary
Consumer Product Safety Commission

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¹ See RCA-Upholstered-Furniture-Flammability-Standard-TB117-2013-DFR-and-NPR.pdf (cpsc.gov)